

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 235**

4 (By Senators Kessler (Acting President) and Hall,

5 By Request of the Executive)

6 _____
7 [Originating in the Committee on Finance; reported February 15,
8 2011.]

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12 A BILL to amend and reenact §7-22-3, §7-22-4, §7-22-5, §7-22-7,
13 §7-22-10, §7-22-12, §7-22-15, §7-22-17 and §7-22-20 of the
14 Code of West Virginia, 1931, as amended, all relating to
15 revising the County Economic Opportunity Development District
16 Act generally; defining the term "remediation"; including
17 remediation of landfills, former coal or other mining sites,
18 solid waste facilities or hazardous waste sites as permissible
19 development expenditures for approved projects; changing
20 standard by which the maximum amounts of reserves that may be
21 established in the financing of a project are measured;
22 reducing the amount of capital investment required for project
23 approval; providing that the Development Office cannot approve
24 a project involving remediation unless all development
25 expenditures proposed within a certain time frame result in

1 more than \$25 million in capital investment in the district;
2 changing "ordinance" to "order"; correcting language by
3 changing "municipality" to "county"; providing that the
4 Development Office may not approve a project involving
5 remediation unless the county commission submits clear and
6 convincing information that the proposed remediation
7 expenditures to be financed with bonds or notes do not
8 constitute more than twenty-five percent of a project's total
9 development expenditures; and providing technical and clerical
10 cleanup.

11 *Be it enacted by the Legislature of West Virginia:*

12 That §7-22-3, §7-22-4, §7-22-5, §7-22-7, §7-22-10, §7-22-12,
13 §7-22-15, §7-22-17 and §7-22-20 of the Code of West Virginia, 1931,
14 as amended, be amended and reenacted, all to read as follows:

15 **ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.**

16 **§7-22-3. Definitions.**

17 For purposes of this article, the term:

18 (1) "County commission" means the governing body of a county
19 of this state;

20 (2) "Development expenditures" means payments for governmental
21 functions, programs, activities, facility construction,
22 improvements and other goods and services which a district board is
23 authorized to perform or provide under section five of this
24 article;

25 (3) "District" means an economic opportunity development

1 district created pursuant to this article;

2 (4) "District board" means a district board created pursuant
3 to section ten of this article; and

4 (5) "Eligible property" means any taxable or exempt real
5 property located in a district established pursuant to this
6 article.

7 (6) "Remediation" means measures undertaken to bring about the
8 reconditioning or restoration of property located within the
9 boundaries of an economic opportunity development district that has
10 been affected by exploration, mining, industrial operations or
11 solid waste disposal and which measures, when undertaken, will
12 eliminate or ameliorate the existing state of the property and
13 enable the property to be commercially developed.

14 **§7-22-4. Authorization to create economic opportunity development**
15 **districts.**

16 A county commission may, in accordance with the procedures and
17 subject to the limitations set forth in this article:

18 (1) Create one or more economic opportunity development
19 districts within its county;

20 (2) Provide for the administration and financing of
21 development expenditures within the districts; and

22 (3) Provide for the administration and financing of a
23 continuing program of development ~~and redevelopment~~ expenditures
24 within the districts.

25 **§7-22-5. Development expenditures.**

1 Any county commission that has established an economic
2 opportunity development district under this article may make, or
3 authorize to be made by a district board and other public or
4 private parties, development expenditures as will promote the
5 economic vitality of the district and the general welfare of the
6 county, including, but not limited to, expenditures for the
7 following purposes:

8 (1) Beautification of the district by means ~~such as~~ including
9 landscaping and construction and erection of fountains, shelters,
10 benches, sculptures, signs, lighting, decorations and similar
11 amenities;

12 (2) Provision of special or additional public services such as
13 sanitation, security for persons and property and the construction
14 and maintenance of public facilities, including, but not limited
15 to, sidewalks, parking lots, parking garages and other public
16 areas;

17 (3) Making payments for principal, interest, issuance costs,
18 any of the costs described in section twenty of this article and
19 appropriate reserves for bonds and other instruments and
20 arrangements issued or entered into by the county commission for
21 financing the expenditures of the district described in this
22 section and to otherwise implement the purposes of this article;

23 (4) Providing financial support for public transportation and
24 vehicle parking facilities open to the general public, whether
25 physically situate within the district's boundaries or on adjacent

1 land;

2 (5) Acquiring, building, demolishing, razing, constructing,
3 repairing, reconstructing, refurbishing, renovating,
4 rehabilitating, expanding, altering, otherwise developing,
5 operating and maintaining real property generally, parking
6 facilities, commercial structures and other capital improvements to
7 real property, fixtures and tangible personal property, whether or
8 not physically situate within the district's boundaries: *Provided*,
9 That the expenditure directly benefits the district;

10 (6) Developing plans for the architectural design of the
11 district and portions thereof and developing plans and programs for
12 the future development of the district;

13 (7) Developing, promoting and supporting community events and
14 activities open to the general public that benefit the district;

15 (8) Providing the administrative costs for a district
16 management program;

17 (9) Providing for the usual and customary maintenance and
18 upkeep of all improvements and amenities in the district as are
19 commercially reasonable and necessary to sustain its economic
20 viability on a permanent basis;

21 (10) Providing any other services that the county commission
22 or district board is authorized to perform and which the county
23 commission does not also perform to the same extent on a countywide
24 basis;

25 (11) Making grants to the owners or tenants of economic

1 opportunity development district for the purposes described in this
2 section;

3 (12) Acquiring an interest in any entity or entities that own
4 any portion of the real property situate in the district and
5 contributing capital to any entity or entities; ~~and~~

6 (13) Remediation of publicly or privately owned landfills,
7 former coal or other mining sites, solid waste facilities or
8 hazardous waste sites to facilitate commercial development which
9 would not otherwise be economically feasible; and

10 ~~(13)~~ (14) To do any and all things necessary, desirable or
11 appropriate to carry out and accomplish the purposes of this
12 article notwithstanding any provision of this code to the contrary.

13 **§7-22-7. Application to development office for approval of an**
14 **economic opportunity development district project.**

15 (a) *General.* -- The development office shall receive and act
16 on applications filed with it by county commissions pursuant to
17 section six of this article. Each application must include:

18 (1) A true copy of the notice described in section six of this
19 article;

20 (2) The total cost of the project;

21 (3) A reasonable estimate of the number of months needed to
22 complete the project;

23 (4) A general description of the capital improvements,
24 additional or extended services and other proposed development
25 expenditures to be made in the district as part of the project;

1 (5) A description of the proposed method of financing the
2 development expenditures, together with a description of the
3 reserves to be established for financing ongoing development ~~or~~
4 ~~redevelopment~~ expenditures necessary to permanently maintain the
5 optimum economic viability of the district following its inception:
6 *Provided*, That the amounts of the reserves ~~shall~~ may not exceed the
7 amounts that would be required by ~~ordinary~~ prevailing commercial
8 capital market considerations;

9 (6) A description of the sources and anticipated amounts of
10 all financing, including, but not limited to, proceeds from the
11 issuance of any bonds or other instruments, revenues from the
12 special district excise tax and enhanced revenues from property
13 taxes and fees;

14 (7) A description of the financial contribution of the county
15 commission to the funding of development expenditures;

16 (8) Identification of any businesses that the county
17 commission expects to relocate their business locations from the
18 district to another place in the state in connection with the
19 establishment of the district or from another place in this state
20 to the district: *Provided*, That for purposes of this article, any
21 entities shall be designated "relocated entities";

22 (9) Identification of any businesses currently conducting
23 business in the proposed economic opportunity development district
24 that the county commission expects to continue doing business there
25 after the district is created;

1 (10) A good faith estimate of the aggregate amount of
2 consumers sales and service tax that was actually remitted to the
3 Tax Commissioner by all business locations identified as provided
4 in subdivisions (8) and (9) of this subsection with respect to
5 their sales made and services rendered from their then current
6 business locations that will be relocated from, or to, or remain in
7 the district, for the twelve full calendar months next preceding
8 the date of the application: *Provided*, That for purposes of this
9 article, the aggregate amount is designated as "the base tax
10 revenue amount";

11 (11) A good faith estimate of the gross annual district tax
12 revenue amount;

13 (12) The proposed application of any surplus from all funding
14 sources to further the objectives of this article;

15 (13) The Tax Commissioner's certification of: (i) The amount
16 of consumers sales and service taxes collected from businesses
17 located in the economic opportunity district during the twelve
18 calendar months preceding the calendar quarter during which the
19 application will be submitted to the development office; (ii) the
20 estimated amount of economic opportunity district excise tax that
21 will be collected during the first twelve months after the month in
22 which the Tax Commissioner would first begin to collect that tax;
23 and (iii) the estimated amount of economic opportunity district
24 excise tax that will be collected during the first thirty-six
25 months after the month in which the Tax Commissioner would first

1 begin to collect that tax; and

2 (14) Any additional information the development office may
3 require.

4 (b) *Review of applications.* -- The development office shall
5 review all project proposals for conformance to statutory and
6 regulatory requirements, the reasonableness of the project's budget
7 and timetable for completion and the following criteria:

8 (1) The quality of the proposed project and how it addresses
9 economic problems in the area in which the project will be located;

10 (2) The merits of the project determined by a cost-benefit
11 analysis that incorporates all costs and benefits, both public and
12 private;

13 (3) Whether the project is supported by significant private
14 sector investment and substantial credible evidence that, but for
15 the existence of sales tax increment financing, the project would
16 not be feasible;

17 (4) Whether the economic opportunity district excise tax
18 dollars will leverage or be the catalyst for the effective use of
19 private, other local government, state or federal funding that is
20 available;

21 (5) Whether there is substantial and credible evidence that
22 the project is likely to be started and completed in a timely
23 fashion;

24 (6) Whether the project will, directly or indirectly, improve
25 the opportunities in the area where the project will be located for

1 the successful establishment or expansion of other industrial or
2 commercial businesses;

3 (7) Whether the project will, directly or indirectly, assist
4 in the creation of additional long-term employment opportunities in
5 the area and the quality of jobs created in all phases of the
6 project, to include, but not be limited to, wages and benefits;

7 (8) Whether the project will fulfill a pressing need for the
8 area, or part of the area, in which the economic opportunity
9 district is located;

10 (9) Whether the county commission has a strategy for economic
11 development in the county and whether the project is consistent
12 with that strategy;

13 (10) Whether the project helps to diversify the local economy;

14 (11) Whether the project is consistent with the goals of this
15 article;

16 (12) Whether the project is economically and fiscally sound
17 using recognized business standards of finance and accounting; and

18 (13) (A) The ability of the county commission and the project
19 developer or project team to carry out the project: *Provided*, That
20 no project may be approved by the development office unless the
21 amount of all development expenditures proposed to be made in the
22 first twenty-four months following the creation of the district
23 results in capital investment of more than ~~\$50 million~~ \$25 million
24 in the district and the county submits clear and convincing
25 information, to the satisfaction of the development office, that

1 ~~such~~ the investment will be made if the development office approves
2 the project and the Legislature authorizes the county commission to
3 levy an excise tax on sales of goods and services made within the
4 economic opportunity district as provided in this article.

5 (B) Notwithstanding any provision of paragraph (A) of this
6 subdivision to the contrary, no project involving remediation may
7 be approved by the Development Office unless the amount of all
8 development expenditures proposed to be made in the first
9 forty-eight months following the creation of the district results
10 in capital investment of more than \$25 million in the district. In
11 addition to the remaining provisions of paragraph (A) of this
12 subdivision the development office may not approve a project
13 involving remediation authorized under section five of this article
14 unless the county commission submits clear and convincing
15 information, to the satisfaction of the development office, that
16 the proposed remediation expenditures to be financed by the
17 issuance of bonds or notes pursuant to section sixteen of this
18 article do not constitute more than twenty-five percent of the
19 total development expenditures associated with the project.

20 (c) *Additional criteria.* -- The development office may
21 establish other criteria for consideration when approving the
22 applications.

23 (d) *Action on the application.* -- The executive director of
24 the development office shall act to approve or not approve any
25 application within thirty days following the receipt of the

1 application or the receipt of any additional information requested
2 by the development office, whichever is the later.

3 (e) *Certification of project.* -- If the executive director of
4 the development office approves a county's economic opportunity
5 district project application, he or she shall issue to the county
6 commission a written certificate evidencing the approval.

7 The certificate shall expressly state a base tax revenue
8 amount, the gross annual district tax revenue amount and the
9 estimated net annual district tax revenue amount which, for
10 purposes of this article, is the difference between the gross
11 annual district tax revenue amount and the base tax revenue amount,
12 all of which the development office has determined with respect to
13 the district's application based on any investigation it considers
14 reasonable and necessary, including, but not limited to, any
15 relevant information the development office requests from the Tax
16 Commissioner and the Tax Commissioner provides to the development
17 office: *Provided*, That in determining the net annual district tax
18 revenue amount, the development office may not use a base tax
19 revenue amount less than that amount certified by the Tax
20 Commissioner but, in lieu of confirmation from the Tax Commissioner
21 of the gross annual district tax revenue amount, the development
22 office may use the estimate of the gross annual district tax
23 revenue amount provided by the county commission pursuant to
24 subsection (a) of this section.

25 (f) *Certification of enlargement of geographic boundaries of*

1 *previously certified district.* -- If the executive director of the
2 development office approves a county's economic opportunity
3 district project application to expand the geographic boundaries of
4 a previously certified district, he or she shall issue to the
5 county commission a written certificate evidencing the approval.

6 The certificate shall expressly state a base tax revenue
7 amount, the gross annual district tax revenue amount and the
8 estimated net annual district tax revenue amount which, for
9 purposes of this article, is the difference between the gross
10 annual district tax revenue amount and the base tax revenue amount,
11 all of which the development office has determined with respect to
12 the district's application based on any investigation it considers
13 reasonable and necessary, including, but not limited to, any
14 relevant information the development office requests from the tax
15 commissioner and the tax commissioner provides to the development
16 office: *Provided,* That in determining the net annual district tax
17 revenue amount, the development office may not use a base tax
18 revenue amount less than that amount certified by the tax
19 commissioner but, in lieu of confirmation from the Tax Commissioner
20 of the gross annual district tax revenue amount, the development
21 office may use the estimate of the gross annual district tax
22 revenue amount provided by the county commission pursuant to
23 subsection (a) of this section.

24 (g) *Promulgation of rules.* -- The executive director of the
25 development office may promulgate rules to implement the economic

1 opportunity development district project application approval
2 process and to describe the criteria and procedures it has
3 established in connection therewith. These rules are not subject to
4 the provisions of chapter twenty-nine-a of this code but shall be
5 filed with the Secretary of State.

6 **§7-22-10. Ordinance Order to create district as approved by**
7 **Development Office and authorized by the**
8 **Legislature.**

9 (a) *General.* -- If an economic opportunity development
10 district project has been approved by the executive director of the
11 development office and the levying of a special district excise tax
12 for the district has been authorized by the Legislature, all in
13 accordance with this article, the county commission may create the
14 district by order entered of record as provided in article one of
15 this chapter: *Provided,* That the county commission may not amend,
16 alter or change in any manner the boundaries of the economic
17 opportunity development district authorized by the Legislature. In
18 addition to all other requirements, the order shall contain the
19 following:

20 (1) The name of the district and a description of its
21 boundaries;

22 (2) A summary of any proposed services to be provided and
23 capital improvements to be made within the district and a
24 reasonable estimate of any attendant costs;

1 (3) The base and rate of any special district excise tax that
2 may be imposed upon sales by businesses for the privilege of
3 operating within the district, which tax shall be passed on to and
4 paid by the consumer, and the manner in which the taxes will be
5 imposed, administered and collected, all of which shall be in
6 conformity with the requirements of this article; and

7 (4) The district board members' terms, their method of
8 appointment and a general description of the district board's
9 powers and duties, which powers may include the authority:

10 (A) To make and adopt all necessary bylaws and rules for its
11 organization and operations not inconsistent with any applicable
12 laws;

13 (B) To elect its own officers, to appoint committees and to
14 employ and fix compensation for personnel necessary for its
15 operations;

16 (C) To enter into contracts with any person, agency,
17 government entity, agency or instrumentality, firm, partnership,
18 limited partnership, limited liability company or corporation,
19 including both public and private corporations, and for-profit and
20 not-for-profit organizations and generally to do any and all things
21 necessary or convenient for the purpose of promoting, developing
22 and advancing the purposes described in section two of this
23 article;

24 (D) To amend or supplement any contracts or leases or to enter
25 into new, additional or further contracts or leases upon the terms

1 and conditions for consideration and for any term of duration, with
2 or without option of renewal, as agreed upon by the district board
3 and any person, agency, government entity, agency or
4 instrumentality, firm, partnership, limited partnership, limited
5 liability company or corporation;

6 (E) To, unless otherwise provided in, and subject to the
7 provisions of any contracts or leases to operate, repair, manage
8 and maintain buildings and structures and provide adequate
9 insurance of all types and in connection with the primary use
10 thereof and incidental thereto to provide services, such as retail
11 stores and restaurants, and to effectuate incidental purposes,
12 grant leases, permits, concessions or other authorizations to any
13 person or persons upon the terms and conditions for consideration
14 and for the term of duration as agreed upon by the district board
15 and any person, agency, governmental department, firm or
16 corporation;

17 (F) To delegate any authority given to it by law to any of its
18 officers, committees, agents or employees;

19 (G) To apply for, receive and use grants-in-aid, donations and
20 contributions from any source or sources and to accept and use
21 bequests, devises, gifts and donations from any person, firm or
22 corporation;

23 (H) To acquire real property by gift, purchase or construction
24 or in any other lawful manner and hold title thereto in its own
25 name and to sell, lease or otherwise dispose of all or part of any

1 real property which it may own, either by contract or at public
2 auction, upon the approval by the district board;

3 (I) To purchase or otherwise acquire, own, hold, sell, lease
4 and dispose of all or part of any personal property which it may
5 own, either by contract or at public auction;

6 (J) Pursuant to a determination by the district board that
7 there exists a continuing need for ~~redevelopment~~ development
8 expenditures and that moneys or funds of the district are necessary
9 therefor, to borrow money and execute and deliver the district's
10 negotiable notes and other evidences of indebtedness therefor, on
11 the terms as the district shall determine, and give security
12 therefor as is requisite, including, without limitation, a pledge
13 of the district's rights in its subaccount of the economic
14 opportunity development district fund;

15 (K) To acquire (either directly or on behalf of the
16 ~~municipality~~ county an interest in any entity or entities that own
17 any real property situate in the district, to contribute capital to
18 any entity or entities and to exercise the rights of an owner with
19 respect thereto; and

20 (L) To expend its funds in the execution of the powers and
21 authority given in this section, which expenditures, by the means
22 authorized in this section, are hereby determined and declared as
23 a matter of legislative finding to be for a public purpose and use,
24 in the public interest and for the general welfare of the people of
25 West Virginia, to alleviate and prevent economic deterioration and

1 to relieve the existing critical condition of unemployment existing
2 within the state.

3 (b) *Additional contents of order.* -- The county commission's
4 order shall also state the general intention of the county
5 commission to develop and increase services and to make capital
6 improvements within the district.

7 (c) *Mailing of certified copies of order.* -- Upon entry of an
8 order establishing an economic opportunity development district
9 excise tax, a certified copy of the order shall be mailed to the
10 State Auditor, as ex officio the chief inspector and supervisor of
11 public offices, the State Treasurer and the Tax Commissioner.

12 **§7-22-12. Special district excise tax authorized.**

13 (a) *General.* -- The county commission of a county, authorized
14 by the Legislature to levy a special district excise tax for the
15 benefit of an economic opportunity development district, may, by
16 order entered of record, impose that tax on the privilege of
17 selling tangible personal property and rendering select services in
18 the district in accordance with this section.

19 (b) *Tax base.* -- The base of a special district excise tax
20 imposed pursuant to this section shall be identical to the base of
21 the consumers sales and service tax imposed pursuant to article
22 fifteen, chapter eleven of this code on sales made and services
23 rendered within the boundaries of the district. Sales of gasoline
24 and special fuel are not subject to special district excise tax but
25 remain subject to the tax levied by article fifteen, chapter eleven

1 of this code. Except for the exemption provided in section nine-f
2 of ~~said~~ that article, all exemptions and exceptions from the
3 consumers sales and service tax ~~shall~~ also apply to the special
4 district excise tax.

5 (c) *Tax rate.* -- The rate or rates of a special district
6 excise tax levied pursuant to this section shall be identical to
7 the rate or rates of the consumer sales and service tax imposed
8 pursuant to article fifteen, chapter eleven of this code on sales
9 made and services rendered within the boundaries of the district
10 authorized by this section.

11 (d) *Collection by Tax Commissioner.* -- The order of the county
12 commission imposing a special district excise tax shall provide for
13 the tax to be collected by the Tax Commissioner in the same manner
14 as the tax levied by section three, article fifteen, chapter eleven
15 of this code is administered, assessed, collected and enforced.

16 (1) The Tax Commissioner may require the electronic filing of
17 returns related to the special district excise tax imposed pursuant
18 to this section, and also may require the electronic payment of the
19 special district excise tax imposed pursuant to this section. The
20 Tax Commissioner may prescribe by rules ~~promulgated~~ adopted or
21 proposed pursuant to article three, chapter twenty-nine-a of this
22 code, administrative notices, and forms and instructions, the
23 procedures and criteria to be followed to electronically file those
24 returns and to electronically pay the special district excise tax
25 imposed pursuant to this section.

1 (2) Any rules filed by the State Tax Commissioner relating to
2 the special district excise tax imposed pursuant to this section
3 shall set forth the following:

4 (A) Acceptable indicia of timely payment;

5 (B) Which type of electronic filing method or methods a
6 particular type of taxpayer may or may not use;

7 (C) What type of electronic payment method or methods a
8 particular type of taxpayer may or may not use;

9 (D) What, if any, exceptions are allowable, and alternative
10 methods of payment that may be used for any exceptions;

11 (E) Procedures for making voluntary or mandatory electronic
12 payments or both; and

13 (F) Any other provisions necessary to ensure the timely
14 electronic filing of returns related to the special district excise
15 tax and the making of payments electronically of the special
16 district excise tax imposed pursuant to this section.

17 (3)(A) Notwithstanding the provisions of section five-d,
18 article ten, chapter eleven of this code: (i) So long as bonds are
19 outstanding pursuant to this article, the Tax Commissioner shall
20 provide on a monthly basis to the trustee for bonds issued pursuant
21 to this article information on returns submitted pursuant to this
22 article; and (ii) the trustee may share the information so obtained
23 with the county commission that established the economic
24 opportunity development district that issued the bonds pursuant to
25 this article and with the bondholders and with bond counsel for

1 bonds issued pursuant to this article. The Tax Commissioner and
2 the trustee may enter into a written agreement in order to
3 accomplish ~~the~~ exchange of the information.

4 (B) Any confidential information provided pursuant to this
5 subdivision shall be used solely for the protection and enforcement
6 of the rights and remedies of the bondholders of bonds issued
7 pursuant to this article. Any person or entity that is in
8 possession of information disclosed by the Tax Commissioner or
9 shared by the trustee pursuant to subdivision (a) of this
10 subsection is subject to the provisions of section five-d, article
11 ten, chapter eleven of this code as if ~~that~~ the person or entity
12 that is in possession of the tax information is an officer,
13 employee, agent or representative of this state or of a local or
14 municipal governmental entity or other governmental subdivision.

15 (e) *Deposit of net tax collected.* --

16 (1) The order of the county commission imposing a special
17 district excise tax shall provide that the Tax Commissioner deposit
18 the net amount of tax collected in the Special Economic Opportunity
19 Development District Fund to the credit of the county commission's
20 subaccount therein for the economic opportunity development
21 district and that the money in the subaccount may only be used to
22 pay for development expenditures as provided in this article except
23 as provided in subsection (f) of this section.

24 (2) The State Treasurer shall withhold from the county
25 commission's subaccount in the Economic Opportunity Development

1 District Fund and shall deposit in the General Revenue Fund of this
2 state, on or before the twentieth day of each calendar month next
3 following the effective date of a special district excise tax, a
4 sum equal to one twelfth of the base tax revenue amount last
5 certified by the development office pursuant to section seven of
6 this article.

7 (f) *Effective date of special district excise tax.* -- Any
8 taxes imposed pursuant to the authority of this section ~~shall be~~
9 are effective on the first day of the calendar month that begins
10 sixty days after the date of adoption of an order entered of record
11 imposing the tax or the first day of any later calendar month
12 expressly designated in the order.

13 (g) *Copies of order.* -- Upon entry of an order levying a
14 special district excise tax, a certified copy of the order shall be
15 mailed to the State Auditor, as ex officio the chief inspector and
16 supervisor of public offices, the State Treasurer and the Tax
17 Commissioner.

18 **§7-22-15. Abolishment and dissolution of district; notice;**
19 **hearing.**

20 (a) *General.* -- Except upon the express written consent of the
21 executive director of the development office and of all the holders
22 or obligees of any indebtedness or other instruments the proceeds
23 of which were applied to any development ~~or redevelopment~~
24 expenditures or any indebtedness the payment of which is secured by

1 revenues payable into the fund provided under section eight of this
2 article or by any public property, a district may only be abolished
3 by the county commission when there is no outstanding indebtedness,
4 the proceeds of which were applied to any development ~~or~~
5 ~~redevelopment~~ expenditures or the payment of which is secured by
6 revenues payable into the fund provided under section eight of this
7 article, or by any public property, and following a public hearing
8 upon the proposed abolishment.

9 (b) *Notice of public hearing.* -- Notice of the public hearing
10 required by subsection (a) of this section shall be provided by
11 first-class mail to all owners of real property within the district
12 and shall be published as a Class I-0 legal advertisement in
13 compliance with article three, chapter fifty-nine of this code at
14 least twenty days prior to the public hearing.

15 (c) *Transfer of district assets and funds.* -- Upon the
16 abolishment of any economic opportunity development district, any
17 funds or other assets, contractual rights or obligations, claims
18 against holders of indebtedness or other financial benefits,
19 liabilities or obligations existing after full payment has been
20 made on all existing contracts, bonds, notes or other obligations
21 of the district are transferred to and assumed by the county
22 commission. Any funds or other assets transferred shall be used for
23 the benefit of the area included in the district being abolished.

24 (d) *Reinstatement of district.* -- Following abolishment of a
25 district pursuant to this section, its reinstatement requires

1 compliance with all requirements and procedures set forth in this
2 article for the initial development, approval, establishment and
3 creation of an economic opportunity development district.

4 **§7-22-17. Security for bonds.**

5 (a) *General.* -- Unless the county commission ~~shall~~ otherwise
6 ~~determine~~ determines in the ~~resolution~~ order authorizing the
7 issuance of the bonds or notes under the authority of this article,
8 there is hereby created a statutory lien upon the subaccount
9 created pursuant to section eight of this article and all special
10 district excise tax revenues collected for the benefit of the
11 district pursuant to section eleven-a, article ten, chapter eleven
12 of this code for the purpose of securing the principal of the bonds
13 or notes and the interest thereon.

14 (b) *Security for debt service.* -- The principal of and
15 interest on any bonds or notes issued under the authority of this
16 article shall be secured by a pledge of the special district excise
17 tax revenues derived from the economic opportunity development
18 district project by the county commission issuing the bonds or
19 notes to the extent provided in the ~~resolution~~ order adopted by the
20 county commission authorizing the issuance of the bonds or notes.

21 (c) *Trust indenture.* --

22 (1) In the discretion and at the option of the county
23 commission, the bonds and notes may also be secured by a trust
24 indenture by and between the county commission and a corporate
25 trustee, which may be a trust company or bank having trust powers,

1 within or without the State of West Virginia.

2 (2) The resolution order authorizing the bonds or notes and
3 fixing the details thereof may provide that the trust indenture may
4 contain provisions for the protection and enforcing the rights and
5 remedies of the bondholders as are reasonable and proper, not in
6 violation of law, including covenants setting forth the duties of
7 the county commission in relation to the construction, acquisition
8 or financing of an economic opportunity development district
9 project, or part thereof or an addition thereto, and the
10 improvement, repair, maintenance and insurance thereof and for the
11 custody, safeguarding and application of all moneys and may provide
12 that the economic opportunity development district project shall be
13 constructed and paid for under the supervision and approval of the
14 consulting engineers or architects employed and designated by the
15 county commission or, if directed by the county commission in the
16 resolution order, by the district board, and satisfactory to the
17 purchasers of the bonds or notes, their successors, assigns or
18 nominees who may require the security given by any contractor or
19 any depository of the proceeds of the bonds or notes or the
20 revenues received from the district project be satisfactory to the
21 purchasers, their successors, assigns or nominees.

22 (3) The indenture may set forth the rights and remedies of the
23 bondholders, the county commission or trustee and the indenture may
24 provide for accelerating the maturity of the revenue bonds, at the
25 option of the bondholders or the county commission issuing the

1 bonds, upon default in the payment of the amounts due under the
2 bonds.

3 (4) The county commission may also provide by resolution and
4 in the trust indenture for the payment of the proceeds of the sale
5 of the bonds or notes and the revenues from the economic
6 opportunity development district project to any depository it
7 determines, for the custody and investment thereof and for the
8 method of distribution thereof, with safeguards and restrictions it
9 determines to be necessary or advisable for the protection thereof
10 and upon the filing of a certified copy of the resolution or of the
11 indenture for record in the office of the clerk of the county
12 commission of the county in which the economic opportunity
13 development project is located, the resolution has the same effect,
14 as to notice, as the recordation of a deed of trust or other
15 recordable instrument.

16 (5) In the event that more than one certified resolution or
17 indenture is recorded, the security interest granted by the first
18 recorded resolution or indenture has priority in the same manner as
19 an earlier filed deed of trust except to the extent the earlier
20 recorded resolution or indenture provides otherwise.

21 (d) *Mortgage or deed of trust.* --

22 (1) In addition to or in lieu of the indenture provided in
23 subsection (c) of this section, the principal of and interest on
24 the bonds or notes may, but need not, be secured by a mortgage or
25 deed of trust covering all or any part of the economic opportunity

1 development district project from which the revenues pledged are
2 derived and the same may be secured by an assignment or pledge of
3 the income received from the economic opportunity development
4 district project.

5 (2) The proceedings under which bonds or notes are authorized
6 to be issued, when secured by a mortgage or deed of trust, may
7 contain the same terms, conditions and provisions provided ~~for~~
8 herein when an indenture is entered into between the county
9 commission and a trustee and any mortgage or deed of trust may
10 contain any agreements and provisions customarily contained in
11 instruments securing bonds or notes, including, without limiting
12 the generality of the foregoing, provisions respecting the fixing
13 and collection of revenues from the economic opportunity
14 development district project covered by the proceedings or
15 mortgage, the terms to be incorporated in any lease, sale or
16 financing agreement with respect to the economic opportunity
17 development district project, the improvement, repair, maintenance
18 and insurance of the economic opportunity district project, the
19 creation and maintenance of special funds from the revenues
20 received from the economic opportunity development district project
21 and the rights and remedies available in event of default to the
22 bondholders or note holders, the county commission, or to the
23 trustee under an agreement, indenture, mortgage or deed of trust,
24 all as the county commission body considers advisable and shall not
25 be in conflict with the provisions of this article or any existing

1 law: *Provided*, That in making any agreements or provisions, a
2 county commission shall not have the power to incur original
3 indebtedness by indenture, order, resolution, mortgage or deed of
4 trust except with respect to the economic opportunity development
5 district project and the application of the revenues therefrom and
6 shall not have the power to incur a pecuniary liability or a charge
7 upon its general credit or against its taxing powers unless
8 approved by the voters in accordance with article one, chapter
9 thirteen of this code or as otherwise permitted by the Constitution
10 of this state.

11 (e) *Enforcement of obligations.* --

12 (1) The proceedings authorizing any bonds and any indenture,
13 mortgage or deed of trust securing the bonds may provide that, in
14 the event of default in payment of the principal of or the interest
15 on the bonds, or notes, or in the performance of any agreement
16 contained in the proceedings, indenture, mortgage or deed of trust,
17 payment and performance may be enforced by the appointment of a
18 receiver in equity with power to charge and collect rents or other
19 amounts and to apply the revenues from the economic opportunity
20 development district project in accordance with the proceedings or
21 the provisions of the agreement, indenture, mortgage or deed of
22 trust.

23 (2) Any agreement, indenture, mortgage or deed of trust may
24 provide also that, in the event of default in payment or the
25 violation of any agreement contained in the mortgage or deed of

1 trust, the agreement, indenture, mortgage or deed of trust may be
2 foreclosed either by sale at public outcry or by proceedings in
3 equity and may provide that the holder or holders of any of the
4 bonds secured thereby may become the purchaser at any foreclosure
5 sale, if the highest bidder therefor.

6 (f) *No pecuniary liability.* -- No breach of any agreement,
7 indenture, mortgage or deed of trust ~~shall~~ may impose any pecuniary
8 liability upon a county or any charge upon its general credit or
9 against its taxing powers.

10 **§7-22-20. Use of proceeds from sale of bonds.**

11 (a) *General.* -- The proceeds from the sale of any bonds issued
12 under authority of this article shall be applied only for the
13 purpose for which the bonds were issued: *Provided,* That any
14 accrued interest received in any sale shall be applied to the
15 payment of the interest on the bonds sold: *Provided, however,* That
16 if for any reason any portion of the proceeds may not be needed for
17 the purpose for which the bonds were issued, then the unneeded
18 portion of the proceeds may be applied to the purchase of bonds for
19 cancellation or payment of the principal of or the interest on the
20 bonds, or held in reserve for the payment thereof.

21 (b) *Payment of costs.* -- The costs that may be paid with the
22 proceeds of the bonds include all development ~~and redevelopment~~
23 ~~costs~~ expenditures described in section five of this article and
24 may also include, but not be limited to, the following:

1 (1) The cost of acquiring any real estate determined
2 necessary;

3 (2) The actual cost of the construction of any part of an
4 economic opportunity development district project which may be
5 constructed, including architects', engineers', financial or other
6 consultants' and legal fees;

7 (3) The purchase price or rental of any part of an economic
8 opportunity development district project that may be acquired by
9 purchase or lease;

10 (4) All expenses incurred in connection with the
11 authorization, sale and issuance of the bonds to finance the
12 acquisition and the interest on the bonds for a reasonable time
13 prior to construction during construction and for not exceeding
14 twelve months after completion of construction; and

15 (5) Any other costs and expenses reasonably necessary in the
16 establishment and acquisition of an economic opportunity
17 development district project and the financing thereof.

(NOTE: Strike-throughs indicate language that would be
stricken from the present law, and underscoring indicates new
language that would be added.)